

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

UNITED STATES OF AMERICA,

Plaintiff(s),

V.

JOHN AMARALABORDE, et al.,

Defendant(s).

Case No. 2:17-cr-0077-JCM-NJK

ORDER

Pending before the Court is an order to show cause why the stipulated protective order with respect to Defendant Faris should not be vacated. Docket No. 33. The response thereto also seeks reconsideration of the Court's denial of the stipulated protective order with respect to Defendant Amaralaborde. *See* Docket No. 34 at 7; *see also* Docket No. 32 (order denying without prejudice stipulated protective order). The Court held a hearing on these matters on May 9, 2017. Docket No. 37.

The question before the Court is a discrete one, whether Defendants in this case should be given copies of discovery that include the personal identifying information of their alleged victims. These copies would be available to Defendants for their review in the prison law library. *See Docket No. 34 at 6.* “At any time the court may, for good cause, deny, restrict, or defer discovery or inspection, or grant other appropriate relief.” Fed. R. Crim. Pro. 16(d)(1). As the use of the word “may” connotes, the conditions under which the defense may obtain discovery is subject to the discretion of the Court. *See, e.g., In re Terrorist Bombings of U.S. Embassies in E. Africa*, 552 F.3d 93, 122 (2d Cir. 2008). In determining whether a protective order should be entered, the Court is also mindful of other applicable requirements,

1 including the requirement in the Crime Victims' Rights Act that, *inter alia*, crime victims have the "right
 2 to be reasonably protected from the accused." 18 U.S.C. § 3771(a)(1). The Court finds the proposal to
 3 provide Defendants copies of discovery with personal identifying information, as currently written, runs
 4 afoul of this provision of the Crime Victims' Rights Act.

5 As articulated at the detention hearings in this case, the Government contends that Defendants have
 6 a history of non-compliance with previous Court orders (including failure to appear and violation of terms
 7 of probation) and that they pose a risk of danger to the community. *See* Hearing Rec. (3/20/17) at 3:37 -
 8 3:38 p.m.; Hearing Rec. (4/26/17) at 3:17 - 3:18 p.m. The Government also explained at the hearing held
 9 on the instant matters that Defendants engaged in the theft of mail in this case, at least in part, for the
 10 purpose of misusing the alleged victims' personal identifying information. *See* Hearing Rec. (5/9/2017)
 11 at 8:37 - 8:38 a.m. Providing Defendants access to the very information the Government contends they
 12 misused is highly problematic. *See, e.g., United States v. Griffin*, 2014 WL 1767201, at *1-2 (S.D. Miss.
 13 May 2, 2014).

14 Despite the Government's contentions, it now seeks to give Defendants copies of discovery
 15 containing personal identifying information of their alleged victims because (1) the discovery is
 16 "voluminous" and (2) a protective order will ensure compliance. Docket No. 34 at 3, 5.¹ Neither position
 17 is persuasive. First, the discovery in this case is estimated at 700 pages in length. *See* Docket No. 30 at
 18 2. That is not voluminous discovery. Second, the Government's position that a protective order will
 19 suffice to protect the rights of the alleged victims runs counter to its previous contentions that Defendants
 20
 21
 22

23 ¹ The citation to *United States v. Vaughn* does not support the position advocated here, as that court
 24 ordered that witness and victim identification and contact information must be produced in unredacted form
to defense counsel but not to the defendant. 2008 WL 4615030, at *3 (E.D. Cal. Oct. 17, 2008) ("Any
 25 disclosure pursuant to this order, or derived from information produced pursuant to this order shall be
 26 attorneys' eyes only . . . all [viewing] persons shall be identified to the government and they shall sign a
 27 protective order to be prepared by the government which precludes dissemination to any other person,
including the defendant, of the disclosed information" (emphasis added)). The Court echoes the sentiment
 28 of Judge Hollows that "the undersigned has no doubt that the defense lawyers in this case . . . would not
 negligently or purposefully disobey a protective order." *Id.*

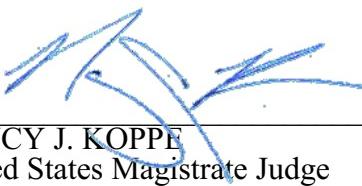
1 have a history of non-compliance with Court orders and may be in the business of misusing personal
2 identifying information for criminal gain.²

3 In short, the Court finds that giving Defendants copies of discovery with their alleged victims'
4 personal identifying information is not appropriate in this case. While it is clear that the Government could
5 in fact redact the personal identifying information, it appears the better course in this case would be to
6 segregate the evidence containing personal identifying information (which appears to be limited to some
7 of the opened mail and the law enforcement summary spreadsheet), and to only permit Defendants to
8 review those documents in the presence of defense counsel. *See Griffin*, 2014 WL 1767201, at *1-2
9 (affirming magistrate judge's ruling permitting detained defendant accused of identity theft access to
10 discovery with his alleged victims' personal identifying information only when in the presence of his
11 counsel). The segregated discovery shall remain in the possession of defense counsel.

12 For these reasons, the Court hereby **VACATES** the stipulated protective order with respect to
13 Defendant Faris. The Court further **DENIES** the request to reconsider the Court's order on the stipulated
14 protective order with respect to Defendant Amaralaborde. The parties shall file, no later than May 16,
15 2017, amended stipulated protective orders that comport with this order.

16 IT IS SO ORDERED

17 Dated: May 9, 2017



18
19 NANCY J. KOPPE
20 United States Magistrate Judge
21
22
23
24

25 ² The position that the protective order will suffice to protect the alleged victims because the
26 Defendants are in custody is similarly lacking. *See* Docket No. 34 at 6 (outlining procedures for prisoners
27 to review discovery materials). Those procedures do not prevent Defendants from, *inter alia*, making notes
28 regarding the materials, and such notes could include the personal identifying information of the alleged
victims.